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ABSTRACT

In response to public health concerns and the adverse health consequences of alcohol abuse, the Surgeon General requested information on state alcohol laws and enforcement. In an effort to examine current state laws and regulations governing youth access to alcohol and how these laws are enforced, the Office of Inspector General conducted interviews with state alcoholic beverage control and/or state enforcement agency officials from all 50 states and the District of Columbia. All state alcohol control laws and regulations pertaining to youth were reviewed. It was found that state laws contained loopholes that permitted underage drinking; that state and local agencies had difficulty enforcing youth alcohol laws; that nominal penalties against vendors and minors limited the effectiveness of enforcement; that states had difficult preventing false identification use; that some states had developed creative methods to enforce alcohol laws and penalize offenders; and that enforcement was inhibited by public attitude and deficiencies in education. States are encouraged to examine their laws and policies concerning youth access to alcohol. (A checklist to help states in doing this is included in the report.) (NB)

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Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

YOUTH AND ALCOHOL: LAWS AND ENFORCEMENT

IS THE 21-YEAR-OLD DRINKING AGE A MYTH?

U.S. DEPARTMENT OF EDUCATION
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EXECUTIVE SUMMARY

PURPOSE

This inspection examined (1) current State laws and regulations governing youth access to alcohol and (2) how these laws are enforced.

BACKGROUND

In response to public health concerns and the adverse health consequences of alcohol abuse, Surgeon General Antonia Novello requested that the Office of Inspector General (OIG) provide information on State alcohol laws and enforcement. These concerns mirror one of Department of Health and Human Services (HHS) Secretary Louis Sullivan's goals which is to reduce the prevalence of alcohol problems among children and youth. This report is one in a series prepared by the OIG related to youth and alcohol. It describes the State laws about youth and alcohol and how State alcoholic beverage control agencies enforce the laws.

At the Federal level, the National Minimum Drinking Age Act of 1984 required all States to raise their minimum purchase and public possession age to 21. States that did not comply faced a reduction in highway funds under the Federal Highway Aid Act. The Department of Transportation has determined that all States are in compliance with this Act.

During June and July 1991, we conducted interviews with State alcoholic beverage control (ABC) and/or State enforcement agency officials from all 50 States and the District of Columbia. Concurrently, we reviewed all State alcohol control laws and regulations pertaining to youth.

FINDINGS

State laws contain loopholes that permit underage drinking.

Although it is illegal to sell alcoholic beverages to minors, minors in many States can legally purchase, attempt to purchase, possess, consume, and sell alcohol and enter drinking establishments.

State and local agencies have difficulty enforcing youth alcohol laws.

States are hindered by (1) budget and staff reductions, (2) low priority of youth alcohol enforcement, and (3) lack of ABC jurisdiction over minors.

Nominal penalties against vendors and minors limit enforcement's effectiveness.

While vendors who sell to minors often are fined or have their licenses suspended, license revocations are rare. Penalties against youth who violate the laws often are not deterrents. Even when strict penalties exist, courts are lenient and do not apply them.

States have difficulty preventing false identification use.

False identification is easy to obtain. Laws and penalties against minors' misrepresenting their age do not deter youth from using false identification to buy alcohol.

Some States have developed creative methods to enforce alcohol laws and penalize offenders.

Some of the more popular ideas include suspending driver's licenses, establishing alternative penalties, allowing vendors to obtain signed statements from suspected minors, conducting decoy operations, educating vendors, and enacting stringent "dram shop" laws.

Enforcement is inhibited by public attitude and deficiencies in education.

Public indifference prevents changes in youth attitudes toward alcohol. State officials described techniques to improve education's effectiveness.

CHECKLIST FOR STATES

We encourage States to examine their laws and policies concerning youth access to alcohol and provide a checklist for States in the report.

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INTRODUCTION

PURPOSE

This inspection examined (1) current State laws and regulations governing youth access to alcohol and (2) how these laws are enforced.

BACKGROUND

In response to public health concerns and the adverse health consequences of alcohol abuse, Surgeon General Antonia Novello requested that the Office of Inspector General (OIG) provide information on State alcohol laws and enforcement. These concerns mirror one of Department of Health and Human Services (HHS) Secretary Louis Sullivan's goals which is to reduce the prevalence of alcohol problems among children and youth. This report is one in a series prepared by the OIG related to youth and alcohol.

Youth Alcohol Use

As reported in recent surveys, youth under the legal drinking age of 21 drink alcohol. In a June 1991 report, the OIG reported that 51 percent of the nation's 20.7 million junior and senior high school students have had at least 1 drink within the past year. Eight million students drink weekly and 454,000 binge weekly. In addition, students reported that alcohol is easy to obtain. Nearly 7 million students purchase their own alcohol from stores.[1] In addition to the OIG survey, the 1990 National High School Senior Survey found that 89.5 percent of high school seniors have drunk alcohol at least once, and 32.2 percent have experienced a "binge" of five or more drinks in a row within the previous 2 weeks.[2]

Government and Public Interest Response

At the Federal level, the National Minimum Drinking Age Act of 1984 required all States to raise their minimum purchase and public possession age to 21. States that did not comply faced a reduction in highway funds under the Federal Highway Aid

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[1]Office of Inspector General, Youth and Alcohol: A National Survey--Drinking Habits, Access, Attitudes, and Knowledge, June 1991, p. 3.

[2]University of Michigan, Institute for Social Research, "Monitoring the Future: A Continuing Study of the Lifestyles and Values of Youth," January 1991.

Act.[3] The Department of Transportation has determined that all States are in compliance with this Act.

The National Minimum Drinking Age Act specifically prohibits purchase and public possession of alcoholic beverages. It does not prohibit persons under 21 (also called youth or minors) from drinking. The term "public possession" is strictly defined and does not apply to possession:

- for an established religious purpose;
- when accompanied by a parent, spouse, or legal guardian age 21 or older;
- for medical purposes when prescribed or administered by a licensed physician, pharmacist, dentist, nurse, hospital, or medical institution;
- in private clubs or establishments; and
- in the course of lawful employment by a duly licensed manufacturer, wholesaler, or retailer.

Article XXI of the United States Constitution, which repealed prohibition, grants States the right to regulate alcohol distribution and sale. State laws are unique, but each allows local communities to regulate youth access to alcohol through local ordinances and law enforcement.

Private organizations, including alcohol industry and public-interest groups, are becoming more involved in identifying ways to decrease or eliminate youth access to alcohol. Some organizations, such as Mothers Against Drunk Driving (MADD) and the newly-created Century Council, work to reduce alcohol abuse throughout the country by educating the public and lobbying for legislation.

Controlling Alcoholic Beverage Sale and Distribution

Each State decides how it will license and operate the alcoholic beverage industry--either through a control or license structure. Eighteen "control" States have partial or total responsibility to distribute and sell alcohol. Thirty-three "license" States issue permits or licenses to individuals or companies to sell alcohol.

All States have either State or local administrative agencies that issue liquor licenses and/or enforce the laws against vendors and youth. State agencies, usually called alcoholic beverage control (ABC) agencies, regulate the manufacture, distribution, and sale of alcoholic beverages within the State. Forty-nine States have ABCs while

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[3]Kevin Kadlec, "National Minimum Drinking Age," Cleveland State Law Review (34), 1986, p. 637.

Hawaii and Nevada rely on local agencies to oversee State alcohol laws. These agencies monitor all vendors (also called licensees or permit holders).

Thirty-nine States have "local option" provisions, which allow communities to limit or ban the sale of alcohol. These communities also have the power to regulate where and when alcohol is sold.

States require vendors to obtain State and/or local licenses. Licenses are renewed usually on an annual basis after a renewal fee is paid and other requirements are met. As of July 1991, there were approximately 560,000 retail licenses issued in the United States.

Laws

State laws address separately youth-related violations. These include:

- **Sales to minors.** Prohibits vendors or any other persons from selling, giving, or otherwise providing alcohol to minors.

- **Purchase.** Prohibits or limits minors from obtaining alcohol from vendors or other sources.

- **Possession.** Generally prohibits or limits minors from carrying or handling alcohol. All State laws contain various exemptions, such as handling alcohol in the course of employment and possession with parental permission.

- **Consumption.** Prohibits or limits minors' actual drinking of alcoholic beverages.

- **Misrepresentation of age.** Provides for penalties against minors who present false identification or otherwise represent themselves as being of the legal purchase age.

Penalties

State and local enforcement agencies may use administrative and/or criminal penalties against alcohol law violators. Administrative penalties are assessed against vendors through licensing agencies. Administrative penalties include fines and license suspensions and revocations. Criminal penalties are assessed against vendors or minors through State or local criminal courts. Criminal penalties include fines, jail sentences, and diversionary programs, such as community service.

METHODOLOGY

During June and July 1991, we conducted interviews with ABC and/or State enforcement agency officials from 48 States and the District of Columbia. For Hawaii and Nevada, we interviewed officials from appropriate local enforcement agencies. We used structured discussion guides to obtain information about State laws and enforcement practices, effectiveness, and interagency cooperation.

Concurrently, we reviewed all State alcohol control laws and regulations pertaining to youth. We used the Commerce Clearing House Liquor Control Law Reporter, which continually tracks and updates State liquor control laws. We also used the National Highway Traffic Safety Administration Digest of State Alcohol-Highway Safety Related Legislation, which provides an overview of drunk driving-related laws. When necessary, we contacted State officials to clarify provisions.

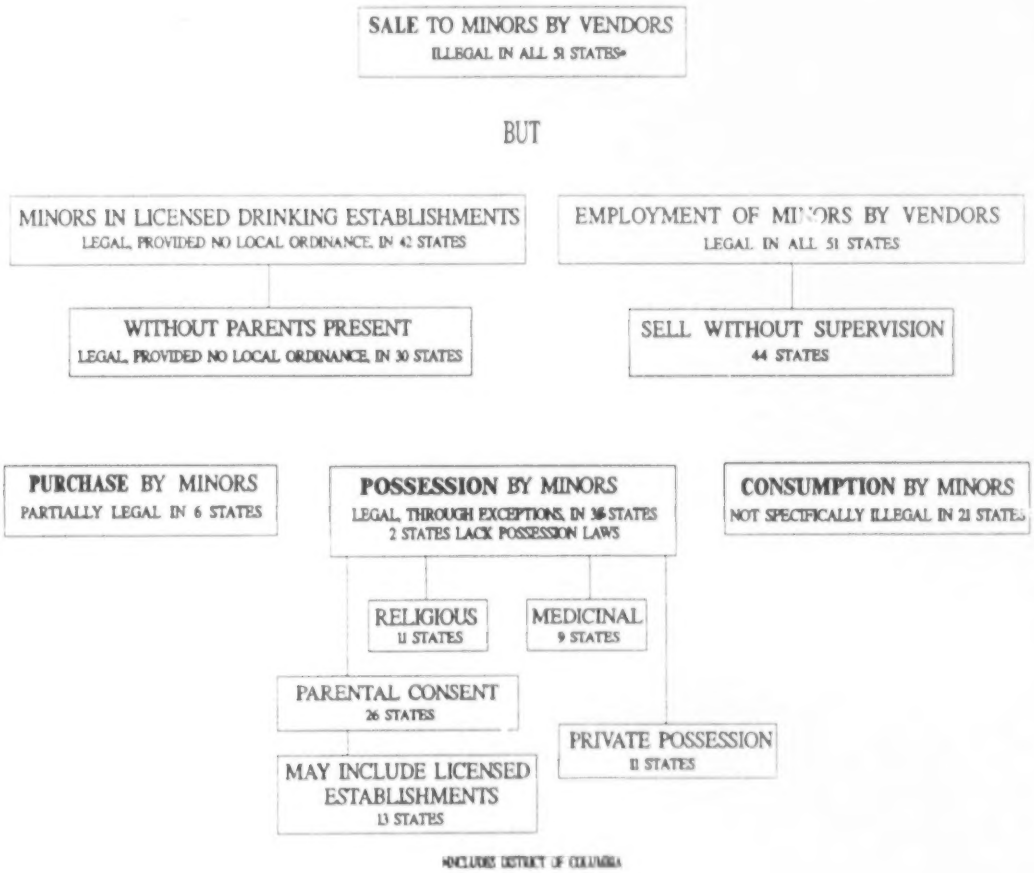
FINDINGS

STATE LAWS CONTAIN LOOPHOLES THAT PERMIT UNDERAGE DRINKING

Although it is illegal to sell alcoholic beverages to minors, minors can legally purchase, possess, and consume alcohol

The chart below illustrates the number of States that permit minors to legally obtain and use alcohol and sell or serve alcoholic beverages.

SALE, PURCHASE, POSSESSION, AND CONSUMPTION
ARE TREATED DIFFERENTLY IN STATE LAWS



Although no States permit vendors to sell to minors, six States do not prohibit minors from purchasing alcohol

Six States do not have laws which prohibit minors from purchasing or attempting to purchase alcohol. However, these States prohibit minors from using false identification or misrepresenting their age. Recently, the Insurance Institute for Highway Safety conducted a study in New York and Washington, D.C. of alcohol vendors selling to minors. Minors purchased beer successfully in 44 to 80 percent of New York stores and 97 percent of Washington, D.C. stores.[4] The Insurance Institute chose these States because no legal impediments existed for minors purchasing or attempting to purchase alcohol.

States allow minors to possess alcohol

Under certain conditions, it is legal for minors to possess alcohol in many States. Minors can possess alcohol with parental consent, for religious purposes, in private residences, in public establishments with a parent or spouse of legal drinking age present, and for medicinal purposes. State officials mainly complained about the private residence exception because often no parental supervision is required. "Most drinking has gone into homes, rather than parking lots," said one official. Another official added, "Our statute that makes it a crime for minors to consume in a public place is fine, but this does not cover private places. An example is a keg party at a private home. The police cannot arrest minors nor can they confiscate the keg of beer."

Some States have attempted to address this issue legislatively. For example, California enacted a "Kegger Statute" that allows authorities with probable cause to enter private establishments to investigate potential youth alcohol violations. Police are then allowed to "seize any alcoholic beverages in plain view at social gatherings, when those gatherings are open to the public, 10 or more persons under the age of 21 are participating, persons under the age of 21 are consuming alcoholic beverages, and there is no supervision of the social gathering by a parent or guardian of one or more of the participants."[5]

Five States prohibit minors from possessing alcohol only if they intend to consume it. Because they must prove "intent to consume," law enforcement officials in these States are reluctant to arrest minors for possession of alcoholic beverages.

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[4]David F. Preusser and Allan F. Williams, Insurance Institute For Highway Safety, Sales of Alcohol to Underage Purchasers in Three New York Counties and Washington, D.C., March 1991, pp. 2 and 4.

[5]California Alcoholic Beverage Control Act, Business and Professions Code, Section 25662(b), p. 194.

Twenty-one States do not specifically prohibit consumption by minors

Officials from these States stressed that minors who consume alcohol can be prosecuted under possession laws. However, one State's law specifically contains a loophole. Arkansas has no consumption law, and its possession law states that "intoxicating liquor, wine, or beer in the body of a minor shall not be deemed to be in his possession."

State laws that allow minors to sell or serve alcohol without adult supervision may result in easier youth access to alcohol

Forty-four States allow minors to sell alcohol without adult supervision in stores or restaurants. According to an OIG survey of junior and senior high school students, more than 3.5 million students purchase alcohol from stores with young clerks and almost 3 million students purchase alcohol from stores where they know the clerk.[6] State officials expressed concern about youth employment laws. "Store owners need to know that youth are under a lot of pressure to sell to other youth," said one State official. Another State official said allowing unsupervised youth to sell alcohol was "ridiculous." Kentucky currently is considering revising youth employment laws to change the age for serving alcohol from 20 to 21.

Although strict local ordinances may apply, 42 States do not prohibit minors from entering drinking establishments

State officials stressed that communities often determine youth access to drinking establishments. However, some officials complained that in communities with no regulation, stopping youth drinking is difficult. "Letting minors into clubs causes a lot of problems," said one official. "It's too easy for someone to buy a drink and then push it over to the person who is underage." Another official was concerned that his State's laws would become more relaxed. "One proposal would allow unaccompanied minors into licensed facilities. This is a regulator's nightmare. Underage drinking laws would be unenforceable."

STATE AND LOCAL AGENCIES HAVE DIFFICULTY ENFORCING YOUTH ALCOHOL LAWS

The major obstacles to effective enforcement are (1) budget and staff reductions, (2) low priority of youth alcohol enforcement, and (3) the lack of ABC jurisdiction over minors. One official commented, "We do not have the mechanism or ability to enforce the laws. Local police have another priority--drugs. They ignore alcohol."

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[6]Office of Inspector General, the findings from the survey included in two reports, Youth and Alcohol: A National Survey: Drinking Habits, Access, Attitudes, and Knowledge, (OEI-09-91-00652) and Youth and Alcohol: A National Survey: Do They Know What They're Drinking? (OEI-09-91-00653).

Forty-three State officials argued that inadequate resources and manpower have hindered enforcement. Officials said:

- "We are transferring all programs involving underage drinking to the local police. We have no personnel because of budget problems in this State. Since January, we have not done any enforcement. Two years ago, we had two investigators in the field; now we have no investigators."

- "We have 10 field investigators for 9,000 to 10,000 licensees, whereas in 1969, we had 30 field investigators and 6,000 licensees."

- "Our enforcement staff has been cut from 72 to 40."

State officials stressed that other priorities and lack of public support prevent enforcement agencies from being effective. "It's a no-win situation," said one official. "Law enforcement does not get public support for busting kids. Parents don't want their child arrested for something that every other child does. Alcohol enforcement is the opposite of illicit drug enforcement."

Enforcing youth alcohol laws is a low priority in some areas. One State official described how costly this can be:

"Up until 5 years ago, the average police officer in New Hampshire didn't do more than take the alcohol away from a youth found with alcohol. About 5 years ago, there was a case in which several youth purchased alcohol in a small New Hampshire town. A police officer stopped the vehicle and took the alcohol, but he let the youth go. The police officer didn't notify the parents. He thought he was doing the kids a favor by not taking them into custody. The youth went to Massachusetts, bought more alcohol, and ended up in a car accident in which someone was killed. The parents of the person who was killed sued the town. The New Hampshire Supreme Court found the town liable. It was a very expensive lawsuit. Since then, all police officers take youth into custody until they can release them to their parents. The police are very conscious about this issue now."

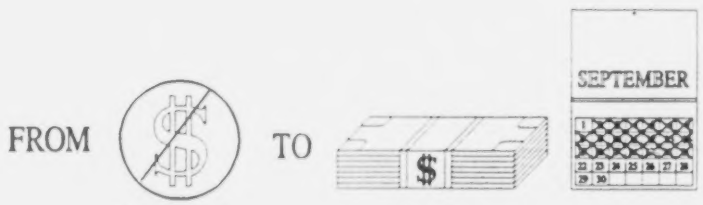
Local enforcement agencies frequently experience similar resource and priority constraints. One official defended local agencies: "They give all of the time that they are capable of giving. Demands for their services and resources are very high. The communities are more interested in things like emergency response time." Cooperation and communication among ABCs and State and local law enforcement agencies often is limited. Some officials complained that enforcement agencies do not share arrest and complaint data with licensing agencies.

NOMINAL PENALTIES AGAINST VENDORS AND MINORS LIMIT ENFORCEMENT'S EFFECTIVENESS

While vendors who sell to minors are often fined or suspended, revocations are rare

Vendors who sell to minors are penalized by administrative and/or criminal sanctions. The charts below illustrate the range of administrative and criminal penalties.

RANGES OF ADMINISTRATIVE PENALTIES FOR VENDORS
(FOR FIRST OFFENSE)



NOTHING

$5,000 OR
6-MONTH SUSPENSION

RANGES OF CRIMINAL PENALTIES FOR VENDORS

$50

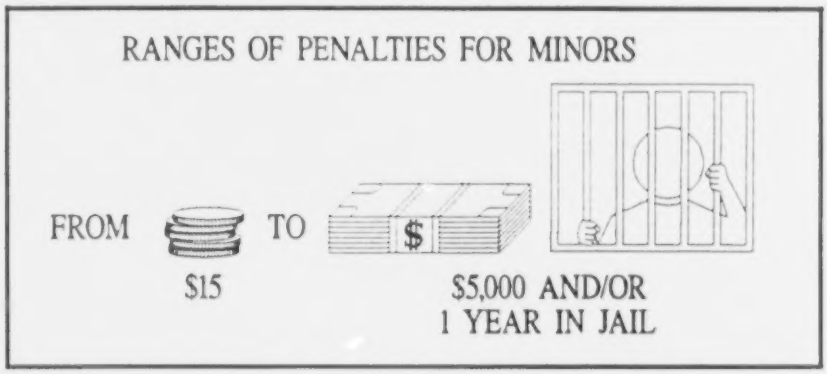
$10,000 AND/OR
5 YEARS IN JAIL

When applied, license suspensions and revocations are effective deterrents because vendors lose all alcohol revenues during the suspension period. However, State agencies often do not suspend licenses for first offenses. In addition, at least 10 States allow vendors to pay increased fines in lieu of license suspensions. In one State, vendors may pay $100 per day during a suspension rather than serve the suspension. State officials say they rarely revoke licenses. Most States revoke licenses only when flagrant violations--such as multiple violations, illicit drug sales, or prostitution--occur on licensed premises.

A few States do not penalize vendors for their employees' actions. Employees may be subject to criminal penalties, but agencies do not take administrative action against the vendors, unless the vendor--rather than his employees--commits the violation.

Penalties against youth often are not deterrents

Although youth alcohol violations are classified as misdemeanors in most States, penalties can be insignificant. One State fines youth $15. An official from a State with a $25 penalty stated, "Many police do not even cite the minor, but they'll cite the licensee. For the kid who's caught, sometimes the only inconvenience is having to show up at our court as a witness." The chart below indicates the range of youth penalties:



A few States have developed separate fine structures for different age groups. In Iowa, the law distinguishes between persons under 19 and those 19 and 20 years of age. While persons under 19 are subject to a $100 fine and 30 days in jail for alcohol violations, persons 19 to 20 are subject to a $15 fine which may be paid like a parking ticket.

Courts are lenient

Even when strict penalties exist, courts do not apply them, according to most State officials. "Judges do not like mandatory penalties," said one official. "Sometimes they ignore the statutes. Kids are not held accountable for breaking the law." Such leniency translates into enforcement difficulties for the alcohol-control agencies. Another official illustrated the problem. "I caught a kid in the parking lot with beer. He was unconcerned. This was the second time in 8 months that he's been caught."

Court leniency is partly the product of priorities and overload. One official said, "The courts look at alcohol as a nuisance. Drugs are a higher priority." Overcrowding results in lowered penalties, asserted a State official. He added, "Our courts are virtually going to break down due to antiquated procedures and case overload. A police officer can spend up to 3 days a week in court rather than on his or her territory."

Court officials' personal feelings may influence judgments. "There is definitely an 'old-boy network' in some of the smaller towns," said an official. Another official described the social pressures the courts encounter. "The court system faces attitudes, both internally and externally. They hear that 'it's all part of growing up' and 'please don't give our son a police record'." Another official summarized, "They have other concerns. There is a prevailing attitude that 'we did that when we were young'."

STATES HAVE DIFFICULTY PREVENTING FALSE ID USE

Thirteen States admitted that they are having difficulty preventing youth from using false identification documents (ID) to purchase alcohol. "There are kids who look over 21, and their IDs look real," said one official. Another official called his State's false ID problem "rampant."

Although 46 States have laws and penalties against minors' misrepresenting their age to purchase alcohol, these do not deter youth. "Kids do not have a problem with using fake ID," said one official. Another official stated that minors will attempt to buy alcohol no matter how poor the identification is:

> We recently had an administrative hearing about a vendor who sold alcohol to a minor. The vendor asked for ID. The 16-year-old boy--who looked 16--presented the ID of 5-foot 4-inch female, except he had taped his picture on it. He was a 6-foot 5-inch male. Nonetheless, the clerk sold beer to him. Luckily, our officers had the store under surveillance and saw him carrying the beer out.

States have difficulty taking enforcement actions against vendors when minors use false ID. "When fake ID is used, we cannot get the retailer for selling to the minor," said one official. Another official added, "An 18-year-old used fake ID to buy alcohol and got killed. The seller was sued, but the case was dismissed. The ID met statutory requirements."

Although States have attempted to combat the problem, they have had limited success. Some States recommend that vendors purchase a book that contains pictures of all legal State IDs. However, minors may obtain legal driver's licenses with false birth documents. Some manufacturers use counterfeiting equipment to produce near-perfect reproductions. "There are sophisticated ID rings," said one official. "We cracked one that had stolen driver's license material. Multiple felonies could have been charged, but it was reduced to a municipal violation."

State officials believe the Federal government must take action, because minors obtain false ID from other States or through the mail. A Connecticut official stated, "Minors can get State driver's licenses in Times Square in New York City for $10 to $15 each." Two other State officials argued that the Federal government must crack down on illegal ID manufacturers. "We've located the manufacturers, but we can't regulate those in other States," said one official. "Federal legislation could make it illegal to

sell anything through the mail which is designed to pass for a legal ID or State license," added another.

SOME STATES HAVE DEVELOPED CREATIVE METHODS TO ENFORCE ALCOHOL LAWS AND PENALIZE OFFENDERS

Faced with limited resources, States have developed innovative methods to prevent youth from obtaining alcohol. Some of the more popular ideas include suspending youth driver's licenses, establishing alternative penalties for minors, allowing vendors to obtain signed statements from suspected minors, conducting decoy or "sting" operations, educating vendors on laws and penalties, and enacting stringent "dram shop" laws.

Drivers license suspension may be the only penalty that deters youth

> *"The one thing that a minor cares about is his driver's license. Other penalties do not work. We find that a lot of fines go uncollected because there's nothing the court can do if the minor doesn't pay."*

Of the 27 States that delay, suspend, or revoke youth drivers' licenses for alcohol-related violations, some take action for any alcohol violation, while others do so for specific violations only. The suspension varies from several days to several years, depending on the State, violation, and minor's record.

Officials from States with this option argue that traditional, statutory penalties do not deter youth. Judges rarely sentence minors to jail, and parents usually pay the monetary penalties, not the minors. One State official complained that "because of our State's weak laws, kids come from surrounding States, both of which provide for license suspension."

Community service and counseling programs are other diversionary penalties

> *"It's embarrassing to be seen picking up trash."*

Alternative penalties are one way to direct the penalty at the minor. Judges often suspend a sentence pending a minor's completion of a community service or counseling program. Youth that are assigned community service often must surrender dozens of hours to various community projects. Other minors need help with alcohol dependency, and they are required to enroll in a counseling program.

Some States offer vendors the opportunity to require suspected minors to sign affidavits

> *"While minors may have no problem using fake identifications, they don't like to sign their names on legal documents."*

Ten State officials mentioned that vendors are allowed to require buyers to sign affidavits stating that they are 21. The affidavit explains the penalties against minors who attempt to purchase alcohol or misrepresent their age.

Vendors support this because the affidavit serves as proof that the minor misrepresented his or her age.

Decoy or "sting" operations successfully limit vendors from selling to minors

Twenty-four officials volunteered that either the State ABC or the State or local police perform successful youth decoy operations otherwise known as "stings." These operations consist of sending minors into stores and restaurants to purchase alcohol. If the employee sells alcohol to the minor, an undercover agent will cite or arrest the employee and/or vendor. The major purposes are to identify and penalize vendors that sell to youth.

Many States do not by law allow "stings." One State official admitted that his State does not use stings because authorities feel uncomfortable having minors attempt illegal actions.

> *"Sting operations allow us to control our vendors much more effectively. In one parish, we had minors buy alcohol in 21 of 22 convenience stores. The vendors attended hearings and were either fined and/or had their licenses suspended. The next year, only three vendors sold alcohol to our minors."*

States perform reverse minor decoy programs, such as Indiana's "Operation Grab" and Delaware's and Oklahoma's "Cops-in-Shops." In these programs, agents pose as clerks and servers to arrest minors and adults who buy for minors. Vendors have been receptive to this program and have cooperated with enforcement agencies.

Educating vendors about laws and penalties reduces sales to minors

> *"I've been astounded by some of the questions vendors ask me during these training sessions."*

Although most States have provisions for either mandatory or voluntary server training programs, 47 of the 51 State officials believe that increasing server training would be effective in preventing minors from obtaining and consuming alcohol. Server training involves educating vendors about the State's alcohol control laws, regulations, and penalties, their civil liability for selling to a minor, how to identify an underage drinker, and how to determine whether an identification card is genuine. Server training may be offered by ABCs or other public or private organizations.

When asked if they have undertaken any special initiatives to prevent alcohol sales to minors, one-third of the officials volunteered that their States' effective server training programs have been vital. "We know server training works. We can demonstrate this," said one State official. "In the past year, we have educated 2,000 people," added another official. "And there has been only one infraction from that group."

While 11 States mandate server training for all vendors, most programs are voluntary. As an incentive, States may reduce penalties for vendors who have completed training and have illegal sale violations. One official reported that vendors in his State are protecting themselves by installing hidden cameras that show people entering the establishment and presenting IDs to the clerk.

Strict "dram shop" laws deter illegal sales to minors

Twenty-three States have civil liability or "dram shop" laws which specifically allow lawsuits against persons who provide alcohol to minors. Several other States allow lawsuits, but only under certain conditions. South Dakota clearly prohibits such lawsuits. Several State officials mentioned that the threat of costly litigation causes vendors to refuse to sell alcohol to minors.

> *"We have strong 'dram-shop' liability laws. Vendors have been more concerned since these were passed. Being sued does not put them out of business, but their insurance premiums go through the roof. Then they have to raise prices, and they lose business. Our dram-shop laws have made industry more responsive. You have to empower the people to affect vendors' well-being."*

In 1985, the American Bar Association (ABA) recommended that all States enact statutes to allow lawsuits against persons who knowingly sell alcohol to minors. The ABA reasoned that such a statute would promote responsible serving practices.[7] In 1985, the Federal government funded the development of a model dram shop law. During this development, a review of court cases in three States revealed that "the legal system was not establishing clear guidelines for applying dram shop liability provisions or concepts."[8] The model dram shop law clearly allows lawsuits for damages resulting from negligent alcohol sales to minors. It also promotes responsible serving practices by allowing a vendor to use evidence of server training as a defense in a lawsuit.

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[7]American Bar Association, American Bar Association Policy Recommendation on Youth Alcohol and Drug Problems (Washington: American Bar Association, 1986), p. 39.

[8]Victor Colman et al., "Preventing Alcohol-Related Injuries: Dram Shop Liability in a Public Health Perspective," Western State University Law Review (12), Spring 1985, p. 444.

Officials reported other practices that they believe are effective:

- New Jersey issues a minor's drivers licenses with profile photographs, rather than the frontal photograph used for adults.
- Many States require visible notices posted in establishments explaining penalties for serving to minors, and for minors themselves.
- In Florida, employees sign affidavits acknowledging that alcohol sales to minors are immediate cause for dismissal.
- Alabama issues press releases listing names of minors arrested for alcohol violations. Michigan publishes the results of vendor sting operations.
- Ohio and New Hampshire send letters to school principals about enhanced enforcement activities during proms or graduation time.
- In Oregon, when schools hear of parties, the ABC sends letters to the parents about the party and the parents' potential liability.
- North Dakota, Oregon, and Washington require vendors to register beer kegs for identification purposes. In addition, North Dakota vendors use invisible ink on tags that allows authorities to track purchasers. In Washington, if the police raid a party and find that the beer keg does not have the tag, the 21-year-old who is nearest to the beer keg may be cited with a violation.
- Some States have parents attend court and diversionary programs with their youth who have been cited for an offense.
- New Hampshire, Ohio, and Virginia offer toll-free telephone numbers for citizen complaints.

ENFORCEMENT IS INHIBITED BY PUBLIC ATTITUDE AND DEFICIENCIES IN EDUCATION

According to State officials, the public's attitude about youth drinking and deficiencies in comprehensive, early alcohol education in schools are common enforcement obstacles. One-third of the officials mentioned that public indifference makes controlling underage drinking difficult. Forty-eight of 51 officials believe that increasing alcohol education in schools would decrease students' alcohol use.

Public indifference prevents changes in youth attitudes

State officials mentioned problems with parental and social attitudes. "A lot of kids are encouraged to drink by lax parental behavior," said one official. In some States, social attitudes have changed when community groups challenge the status quo. State

officials believe that organized community groups, such as MADD, influence State legislators, enforcement agencies, and courts. One official commented, "Society is going to have to become responsible for itself. It will have to expand from the family to the workplace to the community."

Although officials complained that the public accepts youth drinking, they believe that the Surgeon General can change public attitudes. One State official mentioned the cigarette smoking campaigns that publicize adverse health effects. He commented, "The Surgeon General's research on the effects of cigarette smoking had an effect on behavior. Increased research and documentation of alcohol problems might help. The same thing needs to happen with alcohol as happened with smoking." Another added, "It needs to be socially unacceptable for youth to drink."

Early education, innovation, and focus on penalties and health are keys to success

State officials volunteered techniques they use to increase education's effectiveness:

- **Start education early.** State officials believe that early alcohol education, as early as kindergarten, shapes life behavior. "'Why are kids drinking?' is the question that needs to be answered," said one official. "People are better educated about alcohol than ever before, but youth continue to drink. We need to focus our message on younger students. By the time they reach college, it's too late."

- **Use peer pressure to make drinking unpopular.** State ABCs, in conjunction with schools and local communities, have attempted to create a group of non-drinking youth through various promotions. In turn, the group uses peer pressure to discourage youth drinking. In North Carolina, a national insurance company enlisted the help of local radio stations to convince students to sign no-drinking pledges by offering prizes and other incentives. Under a federal grant, Ohio worked with MADD to create an animated character/mascot, called Hoola the Hippo, and a video that encourages younger students to make responsible decisions and resist peer pressure to drink.

- **Educate youth on laws and penalties as well as health consequences of drinking.** Some State officials believe that youth should be educated about the health consequences and legal penalties they face for drinking alcohol. "Kids do not understand what alcohol does to the body and the mind. We should show them the victims of drunk driving, for instance, in driver's education." Another State official believes that programs will be effective only if they show the potential liability--such as suspension of their drivers' licenses--as well as the health effects. One official cautioned that educators must be careful and not equate alcohol with illegal drugs. "A lot of education is done clumsily. It disturbs me that they talk about a glass of beer in the same sentence as crack cocaine. Beer is a legal, socially acceptable substance. Treat it like it is."

CHECKLIST FOR STATES

The OIG report has identified loopholes in State laws and weaknesses in law enforcement and education. We encourage States to examine their laws and policies concerning youth access to alcohol and offer the following checklist.

DO YOUR ALCOHOL LAWS:

- ☐ prohibit youth from purchasing and attempting to purchase,
- ☐ prohibit youth from consuming and possessing in public places,
- ☐ prohibit youth from consuming and possessing in private places without parent or guardian supervision,
- ☐ contain employment provisions which reduce the opportunity for youth to sell alcohol to peers,
- ☐ ban youth from entering bars, taverns, cocktail lounges, and other establishments that are primarily drinking establishments,
- ☐ contain specific civil liability provisions addressing establishments and individuals that illegally provide alcohol to minors,
- ☐ contain provisions such as California's "Kegger Statute" that allow enforcement agents to take action against minors who drink in private residences,
- ☐ provide decoy operation authority, and
- ☐ provide options for diversionary penalties, such as driver's license suspension?

DO YOU EMPHASIZE THE NEED FOR LAW ENFORCEMENT AND ABC AGENCIES TO PREVENT YOUTH FROM ILLEGALLY PURCHASING ALCOHOL BY:

- ☐ giving high priority to detecting and prosecuting alcohol-related offenses,
- ☐ ensuring that alcohol enforcement agencies are adequately funded and staffed,
- ☐ giving your ABC jurisdiction over minors, and
- ☐ assuring that penalties are adequate, appropriate, and uniformly applied?

ARE YOUR EDUCATION EFFORTS DIRECTED AT:

- ☐ youth at early ages, using unique approaches whenever possible,
- ☐ the general public to change attitudes about youth drinking,
- ☐ law enforcement agencies to emphasize the need to eliminate youth access to alcohol,
- ☐ the judicial system to stress the need to impose penalties, and
- ☐ alcoholic beverage sellers through vendor and server training programs?

DO YOU INHIBIT THE USE OF FALSE IDs BY:

- ☐ prohibiting the manufacture and sale of false IDs,
- ☐ prohibiting minors from misrepresenting their age,
- ☐ providing adequate penalties for violations of false ID laws,
- ☐ vigorously prosecuting offenders, and
- ☐ issuing drivers' licenses and identification cards that cannot be duplicated or counterfeited?